



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of Revenue

COMMISSIONER'S OFFICE

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March 9, 2016

The Honorable Dave Talerico and the Honorable Benjamin Nageak
Alaska State Representatives
Co-Chairs, House Resources Committee
State Capitol Rooms 104 and 126
Juneau, AK 99801

Dear Co-Chairs Talerico and Nageak:

The purpose of this letter is to provide you with responses to the questions asked of the Department of Revenue (DOR) and the Department of Natural Resources (DNR) during our presentation to the House Resources Committee on February 17, 2016. Please see questions in italics and our responses immediately below the questions.

1. *Explain in greater detail the credits applicable against the Mining License Tax. How does the exploration incentive credit work? Can it be taken on any land within the state, even where we do not receive royalties? Can it be taken against both royalties and taxes?*

The short answer is yes, the minerals exploration incentive credit may be granted for exploration expenses on lands that the state does not collect royalties from, but that would be up to the discretion of the commissioner of DNR to determine the potential benefit to the state.

Under AS 27.30.010, the commissioner of DNR can grant the minerals exploration incentive credit to exploration activities that are performed on or for the benefit of land in the state, regardless of whether the land is state-owned land.

Two other tax credits that are applicable to multiple tax programs may also be applied against a Mining License Tax liability: the education credit and film production credit.

2. *Was the 3% royalty rate intended to be a placeholder until a more adequate royalty structure could be developed?*

The production royalty of 3% of net income is set forth in AS 38.05.212, as passed into law in Senate Bill 129 (1989) by the 16th Alaska Legislature. The final version of the bill is attached. According to staff who were involved in working on the new royalty structure at the time this legislation passed, several mineral and mine models were developed and a number of iterations of these models were run to determine the best royalty for the state both politically and fiscally. The 3% net profits approach was adopted after all of the modeling and review had been completed. During that time frame and since then, it has never been contemplated that the royalty would be changed from a net profits to something else.

3. *What information is publicly available about royalty negotiations?*

Publicly available information on the production royalty is limited to the aggregate amount collected each year. In 2013, total production royalty from mining on state-owned lands was \$7.07 million,

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and in 2014, it was \$4.7 million (the decrease was primarily due to the drop in commodity prices). The bulk of the collected royalties are likely from the Fort Knox and Pogo mines, the only two major hard rock mines on state land. A portion of royalty revenue is deposited into the Permanent Fund and the School Fund as required by the constitution. Remaining revenue is generally deposited in the General Fund, but the royalties from Fort Knox go to the Mental Health Trust Fund, as that deposit is on Mental Health Trust land.

4. *Explain the depletion allowance in the Mining License Tax.*

DOR will answer this question in the form of a separate presentation to the committee.

I hope you find this information to be useful. Please do not hesitate to contact me if you have further questions.

Sincerely,



Randall Hoffbeck
Commissioner

Attachments:

CSSB 129(Fin)

4/22/89

Rules

Rules/Governor

BY THE FINANCE COMMITTEE

CS FOR SENATE BILL NO. 129 (Finance)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

A BILL

"An Act relating to mining; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 38.05.205(c) is amended to read:

(c) A mining lease shall be for any period up to 55 years, and is renewable if requirements for the lease remain satisfied. Annual rental and production royalties shall be paid as required under AS 38.05.211 and 38.05.212 [THE LESSEE HAS A RIGHT TO A NEW LEASE AT THE END OF EACH LEASE PERIOD. THE COMMISSIONER MAY MAKE REASONABLE ADJUSTMENTS OF THE RENTAL RATE AT THE END OF EACH 20 YEAR PERIOD, BASED UPON CHANGED CONDITIONS IN PRODUCTION COSTS AND MARKETS]. A valid mining claim located and held under AS 38.05.195 may be converted to a lease at any time upon application by the owner, and issuance by the commissioner. Rights [NO RIGHTS] granted by a mining lease may not be exercised until the lease has been filed for record in the recording district where the land is located.

* Sec. 2. AS 38.05.210(a) is amended to read:

(a) Labor shall be performed or improvements made annually on or for the benefit or development of each mining claim, leasehold location, and mining lease on state land except that where adjacent claims, leasehold locations, or mining leases are held in common, the expenditure may be made on any one claim, leasehold location, or mining lease. The commissioner shall establish the date of the com-

mencement of the year during which the labor or improvements are to be performed. Labor shall be performed at the annual rate of \$100 [\$200] per claim or leasehold location, and \$100 for each partial or whole 40 acres of each mining lease. If more work is performed than is required by this section to be performed in any one year, the excess [WORK UP TO A] value [OF \$800] may be applied against labor required to be done during the subsequent year or years, for as many as four years. Instead of performing annual labor, the holder of a claim, leasehold location, or mining lease may make a cash payment to the state equal to the value of the labor required by this subsection.

* Sec. 3. AS 38.05.210(b) is amended to read:

(b) During the year in which [THE PERFORMANCE OF] annual labor is required or within 90 days after the close of that year, the owner of the mining claim, leasehold location, or mining lease, or some other person having knowledge of the facts shall record with the recorder of the district in which the claim, leasehold location, or mining lease is located a signed statement setting out the information, as may be required by the commissioner, concerning the annual labor of the preceding year, [AND] any labor in excess of that required for the preceding year, and any payment of cash instead of annual labor. The statement, properly recorded, is prima facie evidence of the performance of the labor. The failure of one of several co-owners to contribute the proportion of the expenditures required for annual labor from the co-owner shall be treated in accordance with AS 38.05.215 - 38.05.235.

* Sec. 4. AS 38.05 is amended by adding new sections to read:

Sec. 38.05.211. ANNUAL RENTAL. (a) The holder of each mining claim, leasehold location, and mining lease, including a mining lease under AS 38.05.250, shall pay, in advance, annual rental for the right to continue to hold the mining claim, leasehold location, and mining lease, including a mining lease under AS 38.05.250. The annual rental amount shall be based on the number of the years since a mining claim, a leasehold location, or a mining lease's predecessor claim or leasehold location was first located, as follows:

Number of Years Since Rental Amount Per Rental Amount	First Located Acre for Mining for Each Mining
Leases Claim or Leasehold	Location
0 - 5 \$.50 \$ 20	
6 - 10 \$1.00 40	
11 - or more \$2.50 100	

(b) A claim, leasehold location, or mining lease located on or before August 31, 1989 is considered to have been first located on August 31, 1989 for purposes of determining the amount of rental under this section.

(c) The rental for each year shall be credited against the production royalty under AS 38.05.212 as it accrues for that year.

(d) The rental established under this section shall be revised each 10 years by the commissioner based on the consumer price index for Anchorage and published in regulations by the commissioner.

Sec. 38.05.212. PRODUCTION ROYALTY. (a) In exchange for and to preserve the right to extract and possess the minerals produced, the holder of a mining claim, leasehold location, or mining lease, including a mining lease under AS 38.05.250, shall pay a royalty on all minerals produced from land subject to the claim, leasehold location, or mining lease during each calendar year.

(b) The production royalty is three percent of net income as determined under AS 43.65.

(c) The commissioner shall adopt regulations to implement this section and to provide for combined reporting and paying of production royalties for mining operations that include more than one mining claim, leasehold location, or mining lease.

* Sec. 5. AS 38.05.240 is amended to read:

Sec. 38.05.240. LABOR DEFINED FOR AS 38.05.210 - 38.05.235. In AS 38.05.210 - 38.05.235, "labor" includes geological, geochemical, geophysical, and airborne surveys conducted by qualified experts and verified by a detailed report filed in the recording district office in which the claim, leasehold location, or mining lease is located which sets out fully (1) the location of the work performed in relation to the point of discovery and boundaries of the claim, leasehold location, or mining lease, (2) the nature, extent, and cost of it, and (3) the name, address, and professional background of the person conducting the work. The commissioner, by regulation, shall define the nature of acceptable survey work and the qualifications of a person competent to perform this work. The airborne surveys, however, may not be applied as labor for more than two consecutive years or for more than a total of five years on any one mining claim, leasehold location, or mining lease, and each of those surveys shall be nonrepetitive of any previous survey on the same claim, leasehold location, or mining lease.

* Sec. 6. AS 38.05.250(c) is amended to read:

(c) Each [LEASES FOR SUBMERGED LAND SHALL BE CONDITIONED UPON PAYMENT OF AN ANNUAL RENTAL OF \$3 AN ACRE. EXPENDITURES ON OR FOR THE

BENEFIT OF THE LEASEHOLD MAY BE CREDITED AGAINST THE RENTAL. RENT SHALL BE PAID OR A STATEMENT OF ANNUAL LABOR SHALL BE RECORDED WITHIN

90 DAYS AFTER EACH ANNIVERSARY DATE OF THE LEASE. ALL] submerged land mining lease [LEASES] shall be for a period of up to 20 years [,] and

for so long as there is production in paying quantities from the

leased area. [THE COMMISSIONER MAY MAKE REASONABLE ADJUSTMENTS OF THE RENTAL RATE AT THE END OF EACH 10-YEAR PERIOD, BASED UPON CHANGED CONDITIONS IN PRODUCTION COSTS AND MARKET.]

* Sec. 7. AS 38.05.265 is amended to read:

Sec. 38.05.265. ABANDONMENT. Failure to [(1)] properly record a certificate of location or a statement of annual labor, [OR (2)] file with the director within the time prescribed a lease application, [OR

(3)] pay any required annual rental, pay any required production

royalty [OR RECEIVE CREDIT FOR RENTAL], or [(4)] keep location boundaries clearly marked [, ALL] as required by AS 38.05.185 - 38.05.275

and by regulations adopted under these sections [,] constitutes aban-

donment of all rights acquired under the mining claim [LEASE], lease-

hold location, lease, or site involved, and the claim, location,

lease, or site [IT] is subject to relocation by others. A [IF A

LOCATION IS NOT RELOCATED BY ANOTHER PERSON WITHIN ONE YEAR AFTER THE

FAILURE, THE] locator or claimant of an [THE] abandoned location [,]

or a successor in interest [,] may not [RETURN TO] relocate the lo-

cation until one year after abandonment [IT AS THOUGH IT HAD NEVER

BEEN LOCATED]. A statement of annual labor that [WHICH] does not

accurately set out the essential facts is void and of no effect. If

an annual rental or a royalty payment is deficient but is otherwise

timely paid, abandonment does not result if full payment is made

within

(1) the period prescribed by a deficiency notice from the commissioner; or

(2) 30 days after a final judgment establishing the amount due if the deficiency amount due was contested.

* Sec. 8. AS 27.05 is amended by adding a new section to read:

ARTICLE 4. RECLAMATION.

Sec. 27.05.250. RECLAMATION. (a) The commissioner shall require reclamation of state land from the effects of mining.

(b) The commissioner shall adopt regulations under this section and under AS 38 to implement (a) of this section. The regulations must require a miner to submit to the commissioner and receive approval on a reclamation plan before undertaking any mining activity;

the regulations must also establish penalties for noncompliance with the regulations. On a determination by the commissioner that a miner has failed to follow the reclamation plan, the commissioner shall require proof of financial responsibility before the miner undertakes any further mining activity.

(c) In order to provide for an effective reclamation program, when adopting regulations under this section and AS 38, the commissioner shall consult with the commissioners of environmental conservation and fish and game.

(d) This section does not apply to reclamation carried out under AS 27.21.

* Sec. 9. AS 43.05.230 is amended by adding a new subsection to read:

(h) The commissioner shall, upon request, furnish to the Department of Natural Resources copies of tax returns, reports, documents filed under AS 43.65.010 - 43.65.060, and the department's determinations and workpapers. The Department of Natural Resources shall maintain the confidentiality that the department is required to extend to the returns, reports, documents, determinations, and workpapers furnished to the Department of Natural Resources under this subsection.

* Sec. 10. AS 38.05.205(b) and 38.05.210(d) are repealed.

* Sec. 11. TRANSITION. (a) Sections 1 - 7, 9, and 10 of this Act and this section apply to mining claims, leasehold locations, and mining leases located before, on, or after August 31, 1989.

(b) The first annual rental payment due under AS 38.05.211 as enacted in sec. 4 of this Act is for the annual labor year beginning September 1, 1989.

(c) The first production royalty payment due under AS 38.05.212 as enacted by sec. 4 of this Act is for production after December 31, 1989.

(d) The commissioner of natural resources shall adopt regulations to implement the changes made by secs. 1 - 7, 9, and 10 of this Act and this section. The regulations take effect under the Administrative Procedure Act (AS 44.62) but not before August 31, 1989. The regulations may defer the date for the first annual rental payment due under AS 38.05.211 as enacted in sec. 4 of this Act.

* Sec. 12. The commissioner of natural resources shall adopt the regulations required by AS 27.05.250, added by sec. 8 of this Act, by July 1, 1991.

* Sec. 13. Section 11(d) of this Act takes effect immediately under AS 01.10.070(c).

* Sec. 14. Except for secs. 8, 11(d), and 12, this Act takes effect August 31, 1989.

* Sec. 15. Sections 8 and 12 of this Act take effect June 1, 1990.